

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
	:	
NADIRE ATAS,	:	
	:	
	:	
Plaintiff,	:	
	:	1:22-cv-00853-JPO
- against -	:	
	:	<i>Pro Se Case</i>
THE NEW YORK TIMES COMPANY, <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	
_____	X	

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
DEFENDANT LILY MEIER’S MOTION TO DISMISS**

David E. McCraw
The New York Times Company
Legal Department
620 Eighth Avenue
New York, NY 10018
Phone: (212) 556-1234
Fax: (212) 556-4634
mccrad@nytimes.com

Attorney for Lily Meier

Defendant Lily Meier, by and through her undersigned counsel, respectfully submits this reply in support of her motion to dismiss the Third Amended Complaint (“Complaint” or “Compl.”) for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). As set out previously, Plaintiff’s claims against Ms. Meier fail for the simple reason that Plaintiff has not alleged any actionable conduct by Ms. Meier. Plaintiff does not allege that Ms. Meier has any connection to the articles (“Articles”) at issue in this litigation. Ms. Meier’s sole role in the events underlying this litigation was to be harassed online after The New York Times ran a story about Plaintiff’s online harassment (a story edited by Ms. Meier’s mother) and then to report the harassment to Canadian law enforcement officers. *See* Defendant Lily Meier’s Mem. of Law in Support of Mot. to Dismiss Third Amended Compl., Dkt. 61, at 4-5.

I. PLAINTIFF HAS NOT STATED A CLAIM AGAINST MS. MEIER

In opposition, Plaintiff does not even address the dispositive legal issue: the failure of the Complaint to allege that Ms. Meier had any involvement in publishing the Articles. Worse for her case, Plaintiff instead offers only irrelevant or confused statements: that she “does not know Lily Meier” (Plaintiff’s Opposition to Defendant Meier’s Motion to Dismiss (“Opp.”), Dkt. 71, ¶ 109), that Ms. Meier and other defendants “have stepped into the story and become the story” (*id.* ¶ 108), and that “Defendants Kashmir Hill and Ellen Pollak (sic) have together included Lily Meier in the story also alleging that The Plaintiff (‘ Atas’) [sic] is the author” (*id.* ¶ 110). Ms. Meier does not appear in either of the Articles, contrary to what Plaintiff alleges. And whatever her allegations mean, they cannot cure the Complaint’s failure to allege that Ms. Meier defamed Plaintiff. *Cortes v. Twenty-First Century Fox America, Inc.*, 285 F.Supp.3d 629, 638 (S.D.N.Y. 2018) (“It is axiomatic that a defendant cannot be held liable for a libelous statement that it did

not write or publish.”) (quoting *Khan v. New York Times Co.*, 710 N.Y.S.2d 41, 46 (1st Dep’t 2000)).

Plaintiff alleges that Ms. Meier was one of the people whose complaints to police led to her being charged under the Criminal Code of Canada (Opp., ¶ 58), but Plaintiff bases no part of her libel claims on statements made to authorities. Even if she had, statements made to law enforcement authorities in good faith about potentially criminal activity are privileged and may not give rise to a defamation claim. *Levy v. Grandone*, 789 N.Y.S.2d 291 (2d Dep’t 2005); *see also Libel and Slander: Privilege Regarding Communications to Police or Other Officer Respecting Commission of Crime*, 140 A.L.R. 1466-78 (1942).

Plaintiff does not respond to the authority on either of these points cited by Ms. Meier, and on that basis she should be deemed to have conceded the issues. *Scott v. JPMorgan Chase & Co.*, No. 13-cv-646 (KPF), 2014 WL 338753, at *10 (S.D.N.Y. Jan. 30, 2014), *aff’d* 603 Fed.Appx. 33 (2d Cir. 2015) (“A Plaintiff effectively concedes a defendant’s arguments by his failure to respond to them.”) (quoting *Felske v. Hirschmann*, No. 10-cv-8899 (RMB), 2012 WL 716632, at *3 (S.D.N.Y. Mar. 1, 2012)); *Cureton v. U.S. Marshal Serv.*, 322 F. Supp. 2d 23, 27 (D.D.C. 2004) (“When a plaintiff files a response to a motion to dismiss but fails to address certain arguments made by the defendant, the court may treat those arguments as conceded, even when the result is dismissal of the case.”)

Finally, Plaintiff should not be permitted to replead because it would be futile. Plaintiff has already amended her Complaint twice, but she has not and cannot cure the critical flaw in her Complaint: that she has not alleged—and cannot truthfully allege—that Ms. Meier, who is not an employee of The Times, had any involvement in The Times’s stories that Plaintiff claims defamed her. Any opportunity to replead would only needlessly multiply these proceedings. *Port*

Dock & Stone Corp. v. Oldcastle Northeast, Inc., 507 F.3d 117, 127 (2d Cir. 2007) (denying request for remand with leave to replead where appellant “has not offered any pleading that would cure the deficiencies in the extant complaint”); *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (request to replead should be denied where repleading would be futile).

II. THE COMPLAINT AGAINST MS. MEIER SHOULD BE DISMISSED AS WELL FOR THE REASONS SET FORTH BY THE TIMES DEFENDANTS

To the extent that Ms. Meier is deemed a publisher of any statement in the Complaint—and she is not—she adopts and incorporates all the legal arguments set forth in the Memorandum of Law in Support of The New York Times Defendants’ Motion to Dismiss, as well as the Reply Memorandum of Law in Support of The New York Times Defendants’ Motion to Dismiss. The Complaint against her should be dismissed with prejudice for those reasons as well.

CONCLUSION

For all the reasons set forth above, Defendant Lily Meier respectfully requests that the Court dismiss the Complaint with prejudice and provide such other and further relief as the Court deems just and proper.

Dated: June 26, 2023
New York, NY

Respectfully submitted,

/s/ David E. McCraw
David E. McCraw
The New York Times Company
Legal Department
620 Eighth Avenue
New York, NY 10018
Phone: (212) 556-1234
Fax: (212) 556-4634
mccrad@nytimes.com

Attorney for Lily Meier

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2023, I caused the foregoing Reply Memorandum in Support of Defendant Lily Meier's Motion to Dismiss and accompanying papers to be filed via the Court's electronic filing system. Additionally, I caused true and correct copies to be served via U.S. Mail First Class on the following:

Nadire Atas
411-11 Thorncliffe Park Drive
Toronto, ON
M4H 1P3
Canada

/s/ David E. McCraw
David E. McCraw
The New York Times Company
Legal Department
620 Eighth Avenue
New York, NY 10018
Phone: (212) 556-1234
Fax: (212) 556-4634
mccrad@nytimes.com

Attorney for Lily Meier